
**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

BEST LITTLE SITES, d/b/a
COMICBOOKMOVIE.COM,

Plaintiff,

v.

GREAT BOWERY, d/b/a TRUNK
ARCHIVE,

Defendant.

JOINT TRIAL LENGTH REPORT

Case No. 2:19-cv-00319

District Judge David Barlow

Magistrate Judge Cecilia M. Romero

GREAT BOWERY, d/b/a TRUNK
ARCHIVE,

Counterclaim Plaintiff,

v.

BEST LITTLE SITES, d/b/a
COMICBOOKMOVIE.COM, and DOES 1
through 10, inclusive,

Counterclaim Defendants.

The parties, by and through the undersigned counsel and pursuant to the Court's Docket Text Order number 65, dated February 24, 2022, respectfully submit the following.

The parties met and conferred via email on March 1, 2022, and then again on March 9, 2022. The parties were not able to come to an agreement on the number of days needed to try this case. The parties' respective positions are set forth below:

Plaintiff's Estimated Number of Days and Positions: Plaintiff estimates that three (3) days would be needed to try this case.

During the meet and confer process, Defendant's counsel indicated that Defendant estimated that "5 to 7 days" would be needed for trial. In an effort to come to an agreement, counsel for Plaintiff emailed counsel for Defendant and asked why Defendant believed it needed five to seven days for trial. *See* Exh. A attached hereto, meet and confer email chain between counsel. In an email reply dated March 9, 2022, Counsel for Defendant explained that it believes five to seven days would be needed "[s]ince [Plaintiff] did not participate in discovery, [Defendant will] need the extra time to be able to develop testimony from all of the relevant witnesses." *Id.* Defendant is wrong. As the Court found in its November 5, 2020 Order, it was Defendant that failed to properly participate and conduct discovery in compliance with the Scheduling Order. *See* Dkt. 56. Trial is not the time or place for Defendant to get a do-over in taking discovery.

Plaintiff anticipates that it will likely call one witness at trial. Defendant now indicates it anticipates calling "4 to 5" witnesses. However, in its initial disclosures, Defendant only identified two witnesses. *See* Exh. B attached hereto, Defendant's Rule 26 Initial Disclosures. Defendant disclosed that these two witnesses will only testify on the following limited topics:

- Leslie Simitch: "Information regarding Trunk's licensing practices, the licensing of the photographs at issue"
- Annie Liebovitz: "Information regarding the creation of the photographs at issue."

Based on the few witnesses that will be called, and their limited testimony, Plaintiff believes that three days would be needed to try this case.

Defendant's Estimated Number of Days Positions: Defendant believes it will need 5 to 7 days

of trial time due to the number of witnesses it expects to be called and the amount of time needed to develop witness testimony. Defendant anticipates approximately 4 to 5 witnesses will testify including the two witnesses identified by Plaintiff in its initial disclosures and the two witnesses identified by Defendant in its initial disclosures. Defendant anticipates that each witness will require at least one full day for direct examination and expects that the two witnesses identified by Plaintiff in its initial disclosures will require more than one day each.

Dated: March 10, 2022

Respectfully submitted,

/s/ Robert E. Aycock
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